DEEDS—MENTAL CAPACITY TO MAKE.—The grantor was a firm believer in the tenets of the Church of Latter-Day Saints, and on the day before his death deeded certain property to that denomination. It appears that for some five months prior to his death he had been quite sick, and that during the last three weeks he had been confined to his bed and suffered great pain, that on the day he made the deed he was much of the time in a stupor and unable to recognize those about him. In an action of ejectment brought by the church the heir at law defended on the ground of incapacity, but the court *held* that the evidence was insufficient to establish this defense and that the test was whether the grantor at the time he made the deed fully understood, realized and appreciated the probable results and consequences of the transaction. *Corporation of Members of Church of Jesus Christ of Latter-Day Saints* v. *Watson* (1906), — Utah —, 83 Pac. Rep. 731.

This case is of interest because it lays down a definite rule as to what constitutes sufficient mental capacity to make a deed. The rule as given by the House of Lords in *Ball* v. *Manning,* 1 Dowl & C. 254, and quoted by the Supreme Court of the United States in *Dexter* v. *Hall,* 15 Wall. 9, is as follows: "To constitute such unsoundness of mind as should avoid a deed at law, the person executing such deed must be incapable of understanding and acting in the ordinary affairs of life." While this was a radical departure from the old rule that the deed was good unless there was a total depravity of reason yet it fails to include those cases where the grantor is incapable of understanding the ordinary affairs of life, but did arouse himself to a full understanding of the specific transaction in question. The Supreme Court of Delaware has laid down a rule (*Guest* v. *Beeson, 2* Houst. 246,) which is practically that of the principal case. It says: "The unsoundness of mind requisite to incapacitate one from executing a deed must be such as to render him incapable of comprehending the nature of *such act* and the legal consequences likely to flow from it." To the same effect see *Hovey* v. *Hobson,* 55 Me. 256; *Blakely* v. *Blakely,* 33 N. J. Eq. (6 Stew.) 502; *Davren* v. *White,* 42 N. J. Eq. (15 Stew.) 569; *Day* v. *Seeley,* 17 Vt. 542; *Stewart* v. *Flint,* 59 Vt. 144; while the case of *Raymond* v. *Wathen,* 142 Ind. 367, seems to follow the other doctrine.

EMINENT DOMAIN—WHAT IS PUBLIC USE—MINING TUNNEL.—In a proceeding to condemn a right of way for a tunnel it appears from the petition and testimony that petitioner is a corporation organized "to run, construct, work, operate, and maintain tunnels for mine development, drainage, prospecting, and other purposes; to demand, contract for, and receive royalties or other compensation for the use of such tunnel or tunnels, from any and all persons, associations, in any manner using the same"; that the proposed tunnel is to furnish ventilation and drainage for mines adjacent to its line; that it would begin in Ouray county and extend into San Miguel county through a district highly mineralized, where mines are already in successful operation, and would cut other veins at a depth below all workings thereon; that these mines are located at a high altitude and many of the inconveniences in operating them may be avoided by said tunnel if the owners of them desire to use it. Judgment for the petitioner was affirmed on appeal. The defense